



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: JUL 09 2015

FILE: [REDACTED]

PETITION RECEIPT: [REDACTED]

IN RE: Petitioner: [REDACTED]

Beneficiary: [REDACTED]

PETITION: Petition for Alien Fiancé(e) Pursuant to § 101(a)(15)(K) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(K)

ON BEHALF OF PETITIONER:

NO REPRESENTATIVE OF RECORD

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) in your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of the United States who seeks to classify the beneficiary, a native of a citizen of Brazil, as the fiancée of a U.S. citizen pursuant to § 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(K).

The director denied the nonimmigrant visa petition pursuant to 8 C.F.R. § 103.2(b)(8)(ii) because the petitioner failed to submit required initial evidence, specifically, that the beneficiary was free to marry when the petition was filed and that he and the beneficiary had met during the two-year period preceding the date he filed the petition. On appeal, the petitioner submits additional evidence.

Applicable Law

A "fiancé(e)" is defined at Section 101(a)(15)(K) of the Act as:

subject to subsections (d) and (p) of section 214, an alien who -

(i) is the fiancée or fiancé of a citizen of the United States . . . and who seeks to enter the United States solely to conclude a valid marriage with the petitioner within ninety days after admission[.]

Section 214(d)(1) of the Act, 8 U.S.C. § 1184(d)(1), states in pertinent part that a fiancé(e) petition:

shall be approved only after satisfactory evidence is submitted by the petitioner to establish that the parties have previously met in person within 2 years before the date of filing the petition, have a bona fide intention to marry, and are legally able and actually willing to conclude a valid marriage in the United States within a period of ninety days after the alien's arrival, except that the Secretary of Homeland Security in his discretion may waive the requirement that the parties have previously met in person. . . .

The regulation at 8 C.F.R. § 103.2(b)(8)(ii) states that if all required initial evidence is not submitted with the petition or does not demonstrate eligibility, U.S. Citizenship and Immigration Services (USCIS) may, in its discretion, deny the petition for lack of initial evidence. The specific requirements for filing a Form I-129F, Petition for Alien Fiancé(e) (Form I-129F), including a description of the required initial evidence, may be found in the *Instructions* to the Form I-129F.

The statutory requirement of an in-person meeting between the petitioner and the beneficiary is further explained at 8 C.F.R. § 214.2(k)(2), which states, in pertinent part:

The petitioner shall establish to the satisfaction of the director that the petitioner and K-1 beneficiary have met in person within the two years immediately preceding the filing of the petition. As a matter of discretion, the director may exempt the petitioner from this

requirement only if it is established that compliance would result in extreme hardship to the petitioner

The regulation does not define what may constitute extreme hardship to the petitioner. Therefore, each claim of extreme hardship must be judged on a case-by-case basis taking into account the totality of the petitioner's circumstances.

Factual and Procedural History

The petitioner filed the Form I-129F with USCIS on July 10, 2012, without sufficient supporting evidence. On January 16, 2013, the director requested that the petitioner submit evidence to establish that he and the beneficiary met in person during the two-year period from July 10, 2010 and July 10, 2012; or, in the alternative, evidence to exempt the petitioner from this requirement. The director also requested statements from the petitioner and the beneficiary stating their mutual intent to marry one another within 90 days of the beneficiary's admission to the United States; a photocopy of the original foreign-language divorce decree terminating the previous marriage of the beneficiary; and completed and signed Forms G-325A, Biographic Information, for the petitioner and the beneficiary.

The director noted that in response, the petitioner submitted some, but not all, of the evidence requested. Specifically, the petitioner did not submit a photocopy of the original foreign-language divorce decree terminating the previous marriage of the beneficiary to establish that she was free to marry as of the date the petition was filed. He also did not file sufficient evidence showing that he and the beneficiary met in person during the two-year period from July 10, 2010 and July 10, 2012. The director therefore denied the Form I-129F petition on September 12, 2013.

On appeal the petitioner asserts that he previously filed a Form I-129F that USCIS approved in 2010. He submits copies of that petition and additional documentation.

Analysis

The record includes an English-language document purportedly of the beneficiary's divorce decree terminating her previous marriage. However, the petitioner has not submitted, and the record does not include, a photocopy of the original foreign-language divorce decree terminating the previous marriage of the beneficiary to establish that she was free to marry as of the date the petition was filed.

The record also still lacks evidence that the petitioner and the beneficiary have met in person between July 10, 2010 and July 10, 2012, which is the two-year period immediately preceding the filing of the petition, or evidence that the petitioner merits a favorable exercise of discretion to exempt him from such requirement pursuant to section 214(d)(1) of the Act and the regulation at 8 C.F.R. § 214.2(k)(2). The petitioner submits English-language statements with what appear to be untranslated notarization stamps, dated February 20, 2013, from two acquaintances who claim to know the petitioner and the beneficiary and that they have resided together since October 18, 2009. The record, however, lacks corroborative documentation to support these statements. In addition, although on appeal the petitioner submits a photograph of himself and the beneficiary that is film-dated May 4, 2010, this photograph predates the two-year period beginning July 10, 2010. The affidavits and the photograph are therefore insufficient to establish the petitioner and the beneficiary have met in person between July 10, 2010 and July 10, 2012.

The regulation at 8 C.F.R. § 103.2(b)(8)(ii) states that if all required initial evidence is not submitted with the petition or does not demonstrate eligibility, USCIS may, in its discretion, deny the petition for lack of initial evidence. The petitioner did not submit the required documentation, and the beneficiary may not benefit from the instant petition.

Conclusion

As the petitioner has not submitted all of the required initial evidence on appeal, the director's decision to deny the petition shall not be disturbed. In fiancée visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 214(d)(1) of the Act, 8 U.S.C. § 1184(d)(1); *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed. The petition remains denied.